REMARKS

Claims 7-8, 10-17, 20, 22-23, 27, 30-33, 36, 38, and 41-46 are in the case, and subject to a restriction requirement. Claims 7-8, 10-17, 20, 22-23, 27, and 41 are rejected under 35 USC § 103. Claims 30-33, 36, 38, and 42-46 have been withdrawn from consideration. The rejections are respectfully traversed. Reconsideration and allowance of the claims are respectfully requested.

RESTRICTION REQUIREMENT

Applicants hereby elect with traverse to prosecute the claims of Group I, including claims 7-8, 10-17, 20, 22-23, 27, and 41. Thus, claims 30-33, 36, 38, and 42-46 are withdrawn from consideration. Reconsideration is requested.

Restriction is not required by 35 U.S.C. § 121, as suggested in the office action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. § 121 "... the Commissioner *may* require the application to be restricted...." (emphasis added). Likewise, MPEP § 803 lists two criteria that must be present for restriction to be proper:

1. The invention must be independent or distinct; and
2. There must be a ***serious burden*** on the examiner if restriction is not required, *even if there are independent and distinct inventions present*.

In searching the Group I claims, the class and subclass for the Group II claims should probably be searched, to ensure that no relevant art is overlooked. Further, the examiner will undoubtedly use electronic search methods to find the prior art. Thus, even if the claims cover material that is found in separate classifications, there is no burden to search these separate classifications using electronic methods. Typically, the examiner will need to search multiple classifications anyway, to ensure that no relevant art is overlooked.

In addition, even if there is ***some*** additional burden on the examiner in searching the additional classifications, the number of claims in the present application is not great, and thus there certainly is no ***serious*** burden in searching the relevant classifications.

Further yet, the claims are all directed to art that is extremely related, and do not require searching classifications that are significantly different, one from another. For this reason there is no significant burden on the examiner, and certainly no serious burden as required by MPEP § 803, in keeping the claims together.

Further, in maintaining the restriction, the examiner is locking the Patent Office into the position that the two groups of claims are patentable over each other, as provided by MPEP 802.01. Thus, if the restriction is maintained and both sets of claims are eventually allowed, the patents could not be cited against one another under either statutory double-patenting or the judicially created doctrine of double-patenting, and no terminal disclaimer could be required. Taking such a definitive position should be carefully weighed before the restriction requirement is maintained for a mere matter of convenience.

In fact, maintaining the requirement for restriction not only burdens applicants with the additional costs associated with filing and prosecuting separate patent applications, but also requires the examiner to duplicate efforts by examining multiple applications of closely related inventions. Such practice not only wastes public and private funds and Patent Office resources, but also leads to the possibility of inconsistent examinations of closely related inventions. Accordingly, applicants respectfully request that the examiner reconsider and withdraw the restriction requirement.

CLAIM REJECTIONS UNDER §103

Claims 41, 7, 11, 17, and 23 are rejected over Kuo et al. in view of Redmond. Independent claim 41 claims, *inter alia*, a simulation environment running on a computer system comprising at least one ***server process***, at least one ***client process***, and ***only one control process***, where all messages between the server process and the client process are ***controlled by and relayed through the control process***, the control process sets ***synchronization points*** in the server process, the synchronization points indicating points in time where the server process pauses ***until restarted by the control process***, where the server process, the client process, and the control process are ***all separate and distinct processes***.

Thus, independent claim 41 describes the following combination of elements: (1) only one control process, (2) at least one server process, (3) at least one client process, (4) where the control process, client process, and the server process are separate and distinct processes, (5) all messaging between the server process and the client process is controlled by and relayed through the control process, and (6) the control process sets synchronization points where the server process pauses until restarted by the control process.

The combination of Kuo et al. and Redmond does not describe such a software system. Applicants first compare the primary reference against the elements of the claim as recited above, to determine wherein the primary reference is deficient. Then the secondary references are analyzed to determine whether they compensate for the deficiencies detected in the primary reference. If all of the references are deficient as to the same element or combination of elements, then the claim is patentable over the cited references.

Kuo et al. are deficient in regard to elements (4), (5), and (6) as enumerated above. ***First***, the transaction message control mechanisms of Kuo et al. reside within the server process, whereas in the claimed system the control process and the server process are separate and distinct processes (this deficiency has already been acknowledged by the examiner). ***Second***, the client processes of Kuo et al. control the messaging between the server process and the client processes, whereas in the claimed system all messaging between the server process and the client process are controlled by and relayed through the control process (this deficiency has already been acknowledged by the examiner).

Third, the control process of Kuo et al. does not set synch points in the server process in the manner as presently claimed in claim 41. Instead (according to the passage referenced by the examiner), the output process 48 (which is a part of the server process 42 as depicted in Fig. 2) controls the communication from the transaction process 50 (also a part of the server process 42) to the client process 40. The output process 48 synchronizes all of the transaction processes 50. Thus, Kuo et al. describe a server process that has internal synchronization, because all of the control and synchronization elements are disposed within the server process. This is very different from the present invention as claimed, where the separate and distinct control process sets synchronization

points in the separate and distinct server process, and the server process stops until it is started again by the control process.

Thus, there are at least three patentable distinctions between the system of Kuo et al. and the system as presently claimed. Redmond must compensate for all three of these deficiencies or the claim is patentable over the combination. However, Redmond does not compensate for any of the three deficiencies.

As to the first deficiency of Kuo et al. as recited above, Redmond does teach separate and distinct message data (clients?), central controller, and databases (servers?). Thus, for the moment only, applicants will accept that Redmond arguably teaches separate and distinct client processes, server processes, and control process. However, applicants assert that Kuo et al. and Redmond are improperly combined, as described in the next section in more detail. Therefore, the combination of Kuo et al. and Redmond does not fairly teach the separate and distinct client processes, server processes, and control process of the invention as claimed in claim 41.

In regard to the second deficiency of Kuo et al. as recited above, Redmond does not describe that all messages between the server process and the client process are controlled by ***and relayed through*** the control process. Instead, Redmond describes that the central controller controls the external database ***to forward information*** matching the information request to the user (see block 114 of figure 4 and accompanying description). Thus, the central controller of Redmond does not relay all of the messages between the server process and the client process as presently claimed. Instead, the controller instructs the database to forward information directly to the user, without sending the information through the controller.

As to the third deficiency of Kuo et al. as recited above, Redmond is completely mute in regard to the control process setting synch points in the server processes. Therefore, Redmond does not compensate for that third deficiency of Kuo et al.

Therefore, the combination of Kuo et al. and Redmond is deficient in at least the second and third deficiencies as described above, and improperly combined in regard to the first deficiency, as described in more detail in the next section.

Thus, claim 41 patentably defines over Kuo et al. in view of Redmond. Reconsideration and allowance of claim 41 are respectfully requested. Dependent claims

7, 11, 17, and 23 depend from independent claim 41, and contain additional important aspects of the invention. Therefore, dependent claims 7, 11, 17, and 23 patentably define over Kuo et al. in view of Redmond. Reconsideration and allowance of dependent claims 7, 11, 17, and 23 are respectfully requested.

Claims 8, 16, and 27 are rejected over Kuo et al. in view of Redmond and further in view of Baker et al. Dependent claims 8, 16, and 27 depend from independent claim 41, and therefore claim, *inter alia*, a simulation environment running on a computer system comprising at least one ***server process***, at least one ***client process***, and ***only one control process***, where all messages between the server process and the client process are ***controlled by and relayed through the control process***, the control process sets ***synchronization points*** in the server process, the synchronization points indicating points in time where the server process pauses ***until restarted by the control process***, where the server process, the client process, and the control process are ***all separate and distinct processes***, in combination with other important aspects of the invention..

The deficiencies of Kuo et al. in view of Redmond in regard to this combination of elements are described above. Baker et al. do not compensate for the deficiencies of Kuo et al. in view of Redmond, in that Baker et al. also do not describe separate and distinct processes, where all messaging between the server process and the client process is controlled by and relayed through the control process, and the control process sets synchronization points in the server process.

Therefore, claims 8, 16, and 27 patentably define over Kuo et al. in view of Redmond and further in view of Baker et al. Reconsideration and allowance of claims 8, 16, and 27 are respectfully requested.

Claim 10 is rejected over Kuo et al. in view of Redmond and further in view of Trinh et al. Dependent claim 10 depends from independent claim 41, and therefore claims, *inter alia*, a simulation environment running on a computer system comprising at least one ***server process***, at least one ***client process***, and ***only one control process***, where all messages between the server process and the client process are ***controlled by and relayed through the control process***, the control process sets ***synchronization points*** in the server process, the synchronization points indicating points in time where the server process pauses ***until restarted by the control process***, where the server process, the client

process, and the control process are ***all separate and distinct processes***, in combination with other important aspects of the invention..

The deficiencies of Kuo et al. in view of Redmond in regard to this combination of elements are described above. Trinh et al. do not compensate for the deficiencies of Kuo et al. in view of Redmond, in that Trinh et al. also do not describe separate and distinct processes, where all messaging between the server process and the client process is controlled by and relayed through the control process, and the control process sets synchronization points in the server process.

Therefore, claim 10 patentably define over Kuo et al. in view of Redmond and further in view of Trinh et al. Reconsideration and allowance of claim 10 are respectfully requested.

Claims 12-13 are rejected over Kuo et al. in view of Redmond and further in view of Willmann et al. Dependent claims 12-13 depend from independent claim 41, and therefore claim, *inter alia*, a simulation environment running on a computer system comprising at least one ***server process***, at least one ***client process***, and ***only one control process***, where all messages between the server process and the client process are ***controlled by and relayed through the control process***, the control process sets ***synchronization points*** in the server process, the synchronization points indicating points in time where the server process pauses ***until restarted by the control process***, where the server process, the client process, and the control process are ***all separate and distinct processes***, in combination with other important aspects of the invention..

The deficiencies of Kuo et al. in view of Redmond in regard to this combination of elements are described above. Willmann et al. do not compensate for the deficiencies of Kuo et al. in view of Redmond, in that Willmann et al. also do not describe separate and distinct processes, where all messaging between the server process and the client process is controlled by and relayed through the control process, and the control process sets synchronization points in the server process.

Therefore, claims 12-13 patentably define over Kuo et al. in view of Redmond and further in view of Willmann et al. Reconsideration and allowance of claims 12-13 are respectfully requested.

Claims 14-15 are rejected over Kuo et al. in view of Redmond and further in view of Wegrzyn. Dependent claims 14-15 depend from independent claim 41, and therefore claim, *inter alia*, a simulation environment running on a computer system comprising at least one ***server process***, at least one ***client process***, and ***only one control process***, where all messages between the server process and the client process are ***controlled by and relayed through the control process***, the control process sets ***synchronization points*** in the server process, the synchronization points indicating points in time where the server process pauses ***until restarted by the control process***, where the server process, the client process, and the control process are ***all separate and distinct processes***, in combination with other important aspects of the invention..

The deficiencies of Kuo et al. in view of Redmond in regard to this combination of elements are described above. Wegrzyn does not compensate for the deficiencies of Kuo et al. in view of Redmond, in that Wegrzyn also does not describe separate and distinct processes, where all messaging between the server process and the client process is controlled by and relayed through the control process, and the control process sets synchronization points in the server process.

Therefore, claims 14-15 patentably define over Kuo et al. in view of Redmond and further in view of Wegrzyn. Reconsideration and allowance of claims 14-15 are respectfully requested.

Claim 20 is rejected over Kuo et al. in view of Redmond and further in view of Schwaller et al. Dependent claim 20 depends from independent claim 41, and therefore claims, *inter alia*, a simulation environment running on a computer system comprising at least one ***server process***, at least one ***client process***, and ***only one control process***, where all messages between the server process and the client process are ***controlled by and relayed through the control process***, the control process sets ***synchronization points*** in the server process, the synchronization points indicating points in time where the server process pauses ***until restarted by the control process***, where the server process, the client process, and the control process are ***all separate and distinct processes***, in combination with other important aspects of the invention..

The deficiencies of Kuo et al. in view of Redmond in regard to this combination of elements are described above. Schwaller et al. do not compensate for the deficiencies

of Kuo et al. in view of Redmond, in that Schwaller et al. also do not describe separate and distinct processes, where all messaging between the server process and the client process is controlled by and relayed through the control process, and the control process sets synchronization points in the server process. Further, Schwaller et al. describe a multitude of nodes and masters that can communicate directly one with another.

Therefore, claim 20 patentably defines over Kuo et al. in view of Redmond and further in view of Schwaller et al. Reconsideration and allowance of claim 20 are respectfully requested.

Claim 22 is rejected over Kuo et al. in view of Redmond and further in view of Gee. Dependent claim 22 depends from independent claim 41, and therefore claims, *inter alia*, a simulation environment running on a computer system comprising at least one ***server process***, at least one ***client process***, and ***only one control process***, where all messages between the server process and the client process are ***controlled by and relayed through the control process***, the control process sets ***synchronization points*** in the server process, the synchronization points indicating points in time where the server process pauses ***until restarted by the control process***, where the server process, the client process, and the control process are ***all separate and distinct processes***, in combination with other important aspects of the invention..

The deficiencies of Kuo et al. in view of Redmond in regard to this combination of elements are described above. Gee does not compensate for the deficiencies of Kuo et al. in view of Redmond, in that Gee also does not describe separate and distinct processes, where all messaging between the server process and the client process is controlled by and relayed through the control process, and the control process sets synchronization points in the server process.

Therefore, claim 22 patentably defines over Kuo et al. in view of Redmond and further in view of Gee. Reconsideration and allowance of claim 22 are respectfully requested.

COMBINATION OF REFERENCES

The present claims are directed toward a novel client-server simulation environment, which uses a server process and a client process that are controlled by a

control process. Not only does all communication between the server process and the client process go through the control process, but the control process can pause or stop both the server process and the client process, such as by using synchronization points, and then start them again. In this manner, a distributed system can be made to simulate an actual server and client.

Thus, the claims recite certain steps or elements in combination. Applicants do not at this time assert the claim that any one of these steps or elements, taken by itself, is novel and has never before been seen. Thus, applicants anticipate that it might be possible to find each and every step or element somewhere in the prior art. Even so, applicants assert that they have combined these possibly-known steps and elements in a novel and nonobvious manner to produce a process that has great benefits.

The examiner has selected a set of prior art references, which arguably contain the steps or elements as recited in the present claims. However, the steps and elements selected by the examiner are used in combination with many other steps and elements that are not used in the present claims. The examiner has selectively extracted from the cited references only those steps and elements that are common with the present claims, and has rearranged those selected steps and elements in a manner where they align to some degree with the presently claimed steps and elements. However, the question must be answered, "what was obvious about selecting that special set of steps and elements from the prior art?" This question has not been answered.

What the examiner has not done, and what the examiner must do, is provide proper motivation for making the selection and combination of prior art steps and elements. Applicants assert that without the proper motivation, the combination of steps and elements as recited by the examiner is not obvious. As noted above, the mere fact that various steps and elements ***could be*** placed in combination is not a sufficient motivation for actually making the combination. An infinite number of different steps and elements ***could be*** placed in combination, but in order to make the present combination obvious, there must be an allowable motivation to make the combination.

Similarly, to just recite a benefit of the selected combination is also not sufficient. Almost every combination has one or more benefits of some type. Thus, the fact that a given combination may have a certain benefit in common with many other different

combinations does nothing to make that given combination obvious over any of the other combinations. Further, the identified benefits must be obvious from the prior art, and not just in light of the present invention.

Thus, it is respectfully submitted that the references cited do not support combining the elements as claimed in the present invention. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d (BNA) 1566 (Fed. Cir. 1990) states that the PTO erred in rejecting a claimed invention as an obvious combination of the teaching of prior art references when the prior art provided no teaching, suggestion, or incentive supporting the combination. *See Northern Telecom Inc. v. Datapoint Corp*., 15 U.S.P.Q.2d 1321, 1323, *In re Geiger*, 2 U.S.P.Q.2D 1276, 1278. *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp*., 859 F.2d 878, 887, 8 U.S.P.Q.2d (BNA) 1468, 1475 (Fed. Cir.1988) states that one "cannot pick and choose among the individual elements of assorted prior art references to recreate the claimed invention."

There is nothing in the prior art cited to lead a person of ordinary skill to design an apparatus like that of the present invention, other than the hindsight knowledge of this invention. The office action recites certain generalized benefits (realized in hindsight after considering the invention) as motivation for the combination of the references. However, these generalized motivations do not make obvious the combination of the references to produce the claimed invention. Only after considering the invention is it understood that combining the references (and adding a great deal more) tends to produce the motivating elements.

This, however, does not satisfy Section 103. The motivation to combine references cannot come from the invention itself. *See In re Oetiker*, 24 U.S.P.Q.2D 1443, 1446. The claims of the present application appear to have been used as a frame, and individual parts of separate prior art references were employed to recreate a facsimile of the claimed invention. *See W.L. Gore & Assoc., Inc. v. Garlock, Inc*., 220 U.S.P.Q. 303, 312. There is no explanation of what there was in the prior art that would have caused those skilled in the art to combine the references.

The examiner has the burden to show some teaching or suggestion in the references to support their use in the particular claimed combination. *Uniroyal Inc. v.*

Rudkin-Wiley Corp., 5 U.S.P.Q.2D at 1438-1439. In the absence of such, applicants respectfully suggest that the references are improperly combined.

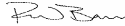
CONCLUSION

Applicants assert that the claims of the present application patentably define over the prior art made of record and not relied upon for the same reasons as given above. Applicants respectfully submit that a full and complete response to the office action is provided herein, and that the application is now fully in condition for allowance. Action in accordance therewith is respectfully requested.

In the event this response is not timely filed, applicants hereby petition for the appropriate extension of time. If any fees are required by this amendment, such fees may be charged to deposit account 12-2252.

Sincerely,

LUEDEKA, NEELY & GRAHAM, P.C.

By: 

Rick Barnes, 39,596

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